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SENATE BILL 38

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING INCREASES IN A BASIC SENTENCE OF IMPRISONMENT WHEN A CRIME IS INTENTIONALLY COMMITTED AGAINST CERTAIN PERSONS OR THEIR PROPERTY; ENACTING A NEW SECTION OF THE CRIMINAL SENTENCING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Sentencing Act is enacted to read:

"[NEW MATERIAL] NONCAPITAL FELONIES, MISDEMEANORS OR PETTY MISDEMEANORS COMMITTED AGAINST A PERSON OR A PERSON'S PROPERTY BECAUSE OF THE ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY, GENDER OR SEXUAL ORIENTATION OF THE PERSON-- ALTERATION OF BASIC SENTENCE-- SUSPENSION AND DEFERRAL LIMITED. --

A. When a separate finding of fact by the court or

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1 jury shows that an offender intentionally injured a person or  
2 intentionally damaged a person's property because of the actual  
3 or perceived race, religion, color, national origin, ancestry,  
4 gender or sexual orientation of that person, whether or not the  
5 offender's belief or perception was correct, and if the  
6 underlying crime is a petty misdemeanor, the basic sentence of  
7 imprisonment prescribed for the offense in Section 31-19-1 NMSA  
8 1978 may be increased by thirty days; provided that the total  
9 sentence shall not exceed one hundred eighty days. The  
10 sentence imposed pursuant to the provisions of this subsection  
11 shall be the first thirty days served and shall not be  
12 suspended or deferred, but may include an alternative sentence  
13 that requires community service, counseling or education.

14 B. When a separate finding of fact by the court or  
15 jury shows that an offender has committed a second or  
16 subsequent petty misdemeanor in which a person was  
17 intentionally injured or a person's property was intentionally  
18 damaged because of the actual or perceived race, religion,  
19 color, national origin, ancestry, gender or sexual orientation  
20 of that person, whether or not the offender's belief or  
21 perception was correct, the basic sentence of imprisonment  
22 prescribed for the offense in Section 31-19-1 NMSA 1978 may be  
23 increased by sixty days; provided that the total sentence shall  
24 not exceed one hundred eighty days. The sentence imposed  
25 pursuant to the provisions of this subsection shall be the

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1 first sixty days served and shall not be suspended or deferred,  
2 but may include an alternative sentence that requires community  
3 service, counseling or education.

4 C. When a separate finding of fact by the court or  
5 jury shows that an offender intentionally injured a person or  
6 intentionally damaged a person's property because of the actual  
7 or perceived race, religion, color, national origin, ancestry,  
8 gender or sexual orientation of that person, whether or not the  
9 offender's belief or perception was correct, and if the  
10 underlying crime is a misdemeanor, the basic sentence of  
11 imprisonment prescribed for the offense in Section 31-19-1 NMSA  
12 1978 may be increased by ninety days; provided that the total  
13 sentence shall not exceed three hundred sixty-four days. The  
14 sentence imposed pursuant to the provisions of this subsection  
15 shall be the first ninety days served and shall not be  
16 suspended or deferred, but may include an alternative sentence  
17 that requires community service, counseling or education.

18 D. When a separate finding of fact by the court or  
19 jury shows that an offender has committed a second or  
20 subsequent misdemeanor in which a person was intentionally  
21 injured or a person's property was intentionally damaged  
22 because of the actual or perceived race, religion, color,  
23 national origin, ancestry, gender or sexual orientation of that  
24 person, whether or not the offender's belief or perception was  
25 correct, the basic sentence of imprisonment prescribed for the

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1 offense in Section 31-19-1 NMSA 1978 may be increased by one  
2 hundred eighty days; provided that the total sentence shall not  
3 exceed three hundred sixty-four days. The sentence imposed  
4 pursuant to the provisions of this subsection shall be the  
5 first one hundred eighty days served and shall not be suspended  
6 or deferred, but may include an alternative sentence that  
7 requires community service, counseling or education.

8 E. When a separate finding of fact by the court or  
9 jury shows that an offender intentionally injured a person or  
10 intentionally damaged a person's property because of the actual  
11 or perceived race, religion, color, national origin, ancestry,  
12 gender or sexual orientation of that person, whether or not the  
13 offender's belief or perception was correct, and if the  
14 underlying crime is a noncapital felony, the basic sentence of  
15 imprisonment prescribed for the offense in Section 31-18-15  
16 NMSA 1978 may be increased by one year. The sentence imposed  
17 pursuant to the provisions of this subsection shall be the  
18 first year served and shall not be suspended or deferred, but  
19 may include an alternative sentence that requires community  
20 service, counseling or education.

21 F. When a separate finding of fact by the court or  
22 jury shows that an offender has committed a second or  
23 subsequent noncapital felony in which a person was  
24 intentionally injured or a person's property was intentionally  
25 damaged because of the actual or perceived race, religion,

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1 color, national origin, ancestry, gender or sexual orientation  
2 of that person, whether or not the offender's belief or  
3 perception was correct, the basic sentence of imprisonment  
4 prescribed for the offense in Section 31-18-15 NMSA 1978 may be  
5 increased by three years. The sentence imposed pursuant to the  
6 provisions of this subsection shall be the first three years  
7 served and shall not be suspended or deferred, but may include  
8 an alternative sentence that requires community service,  
9 counseling or education.

10 G. If the case is tried before a jury and if a  
11 prima facie case has been established showing that in the  
12 commission of the offense a person was intentionally injured or  
13 a person's property was intentionally damaged because of the  
14 actual or perceived race, religion, color, national origin,  
15 ancestry, gender or sexual orientation of that person, whether  
16 or not the offender's belief or perception was correct, the  
17 court shall submit the issue to the jury by special  
18 interrogatory. If the case is tried by the court and if a  
19 prima facie case has been established showing that in the  
20 commission of the offense a person was intentionally injured or  
21 a person's property was intentionally damaged because of the  
22 actual or perceived race, religion, color, national origin,  
23 ancestry, gender or sexual orientation of that person, whether  
24 or not the offender's belief or perception was correct, the  
25 court shall decide the issue and shall make a separate finding

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1 of fact regarding the issue. "

2 Section 2. EFFECTIVE DATE. --The effective date of the  
3 provisions of this act is July 1, 2003.

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